IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

B.S. INGERSOLL, LLC,

A PENNSYLVANIA LIMITED LIABILITY : COMPANY :

:

Plaintiff,

Civ No. 2:22-cv-00771

v.

GREAT AMERICAN INSURANCE COMPANY, AN OHIO CORPORATION,

:

:

Defendant.

PLAINTIFF, B.S. INGERSOLL, LLC'S MOTION TO FILE SUR-REPLY IN OPPOSITION TO DEFENDANT, GREAT AMERICAN INSURANCE COMPANY'S, REPLY IN SUPPORT OF ITS RULE 12(b)(6) MOTION TO DISMISS

B.S. Ingersoll, LLC ("Ingersoll" or the "Plaintiff") by and through its undersigned counsel, Obermayer Rebmann Maxwell and Hippel LLP, seeks leave of Court to file a Sur-Reply (the "Sur-Reply") to the Reply (the "Reply") of Defendant Great American Insurance Company ("GAIC" or the "Defendant") in opposition to Ingersoll's Response (the "Opposition) to GAIC's Rule 12(b)(6) Motion to Dismiss (the "Motion to Dismiss"), which accompanies the instant motion.

On May 22, 2023, GAIC filed a Motion for Leave to File the Reply (the "Leave Motion"), asking the Court to permit GAIC to file the Reply. GAIC attached the Reply to the Leave Motion. Ingersoll does not oppose the Leave Motion, so long as Ingersoll is allowed to file the Sur-Reply in response to the Reply. Ingersoll asserts the Sur-Reply is necessary as the Reply misconstrues arguments made by Ingersoll in the Opposition and the contents of the Court's March 7, 2023, Order (DI #13).

The Sur-Reply asserts that in the Reply, GAIC misstates, misunderstands, and misinterprets both arguments made by Ingersoll in the Opposition and the Court's statements in

Case 2:22-cv-00771-JP Document 22 Filed 06/16/23 Page 2 of 2

the March 7, 2023, Order. Whether done intentionally or not, Ingersoll seeks to use the Sur-Reply

to correct and counter the statements made by GAIC in the Reply in order for the arguments and

assertions made in the Opposition to be undisputable. Namely, that: (i) Ingersoll sufficiently

alleged both waiver and estoppel; (ii) GAIC confuses alleging waiver and estoppel with proving

estoppel and waiver; (iii) GAIC's waiver argument is not supported by the Order or established

law, (iv) the Reply misinterprets Ingersoll's estoppel argument, and (v) GAIC admits it did not

apply the proper 12(b)(6) standard and never intended to do so.

Ingersoll respectfully requests that in the event the Court allows GAIC to file the Reply,

the Court also allows the filing of the attached Sur-Reply in further support of the Opposition and

in further opposition to the Motion to Dismiss.

Respectfully submitted,

Dated: June 16, 2023

By: /s/ Michael D. Vagnoni

Michael D. Vagnoni, Esquire

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